

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEE JAMES MCGRAIL,

Petitioner,

v.

MARTIN GAMBOA, Warden,¹

Respondent.

Case No. CV 18-3642 JVS (PVC)

**ORDER ACCEPTING FINDINGS,
CONCLUSIONS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Petition, all the records and files herein, the Report and Recommendation of the United States Magistrate Judge, and Petitioner's Objections. After having made a *de novo* determination of the portions of the Report and Recommendation to which Objections were directed, the Court concurs with and accepts the findings and conclusions of the Magistrate Judge.

Petitioner's vague and conclusory Objections generally reassert arguments already raised in the First Amended Petition and Traverse, which the Magistrate Judge addressed and rejected in the Report and Recommendation. Petitioner also requests an evidentiary

¹ Martin Gamboa, Warden of the Avenal State Prison in Avenal, California, where Petitioner is currently incarcerated, is substituted as the proper respondent pursuant to Federal Rule of Civil Procedure 25(d).

1 hearing pursuant to 28 U.S.C. § 2254(e)(2) or, in the alternative, to “expand the record,”
 2 with respect to his ineffective assistance claims. (Obj. at 3). Section 2254(e)(2), which
 3 governs evidentiary hearings under AEDPA, provides in relevant part that when a habeas
 4 petitioner failed to develop the factual basis of a claim in state court, a federal district
 5 court may not hold an evidentiary hearing unless the claim relies on a new rule of
 6 constitutional law made retroactive on collateral review or is based on a factual predicate
 7 that could not have been previously discovered through the exercise of due diligence, and
 8 “the facts underlying the claim would be sufficient to establish by clear and convincing
 9 evidence that but for constitutional error, no reasonable factfinder would have found the
 10 applicant guilty of the underlying offense.” 28 U.S.C. § 2254(e)(2). If a state court
 11 adjudicated the prisoner’s claim on the merits, the Supreme Court instructs that habeas
 12 review is “limited to the record that was before the state court that adjudicated the claim
 13 on the merits.” *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). “[E]vidence later
 14 introduced in federal court is irrelevant to §2254(d)(1) review.” *Id.* at 184.

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16 Under Rule 7 of the Rules Governing Habeas Corpus Cases Under Section 2254,
 17 the district court may direct the parties to expand the record by submitting affidavits,
 18 “letters predating the filing of the petition, documents, exhibits and answers under oath to
 19 written interrogatories propounded by the judge.” Habeas Rule 7(b). The purpose of Rule
 20 7 “is to enable the judge to dispose of some habeas petitions not dismissed on the
 21 pleadings, without the time and expense required for an evidentiary hearing.” (Habeas
 22 Rule 7, Advisory Comm. Notes, 1976 adoption). A party seeking to expand the record
 23 must demonstrate an entitlement to an evidentiary hearing under § 2254(e)(2). *See*
 24 *Holland v. Jackson*, 542 U.S. 649, 653 (2004) (restrictions of § 2254(e)(2) apply “when a
 25 prisoner seeks relief based on new evidence without an evidentiary hearing”).

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27 The California Supreme Court did not adjudicate Petitioner’s claims on the merits,
 28 but instead rejected them on procedural grounds. (See Dkt. No. 55, Lodgments 14 and

1 16). In certain circumstances not present here, an evidentiary hearing or expansion of the
 2 record may be warranted to establish whether cause exists to excuse a procedural default.
 3 *See Jones v. Shinn*, 943 F.3d 1211, 1221 (9th Cir. 2019) (citing *Martinez v. Ryan*, 566
 4 U.S. 1 (2012)). Here, Petitioner does not expressly argue that his procedural default
 5 should be excused, but rather appears to be seeking a reweighing of the evidence.
 6 Petitioner does not identify any specific facts that he was unable to develop in state court,
 7 or could not have developed in state court with reasonable diligence, that would warrant
 8 an evidentiary hearing under § 2254(e)(2). Instead, he summarily repeats his undeveloped
 9 allegations about “suppressed” and perjured evidence, and argues that the exhibits
 10 attached to the First Amended Petition -- which primarily consist of excerpts of the
 11 Reporter’s Transcript and Clerk’s Transcript from his underlying criminal proceedings,
 12 along with pre-trial police and private investigator reports, among other documents --
 13 illustrate that the “state court’s factual findings [were] unreasonable.” (Obj. at 2; *see also*,
 14 *e.g.*, FAP, Dkt. No. 46-2 at 4-7 (police reports documenting two assaults committed by
 15 Petitioner on victim David Farrar); *id.* at 9 (transcript excerpt of Lisa Farrar’s trial
 16 testimony); *id.*, Dkt. No. 46-3 at 3 (transcript excerpt of David Farrar’s trial testimony);
 17 *id.* at 5 (transcript excerpt of *Marsden* hearing); *id.* at 9-10 (VMT Investigation report
 18 dated February 24, 2015, approximately seven months before Petitioner’s trial); *id.*, Dkt.
 19 No. 46-5 at 1 (1993 citizen award issued to Petitioner by Monterey County Peace
 20 Officer’s Association); *id.* at 3-4 (preliminary hearing transcript excerpt)). All this
 21 evidence appears to have been known to Petitioner at the time of trial and/or on appeal.
 22 (*See, e.g.*, Dkt. No. 46-5 at 10; Dkt. No. 46-6 at 1-9; Dkt. No. 46-7 at 1-9 (correspondence
 23 between Petitioner and appellate counsel)).

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25 Moreover, none of Petitioner’s allegations establish by clear and convincing
 26 evidence that he was not guilty of the underlying offenses. As noted in the Report and
 27 Recommendation, the evidence against Petitioner was overwhelming. (Report and
 28 Recommendation at 32). Therefore, even if Petitioner had shown that he could not have

1 developed certain facts in state court, an evidentiary hearing would still not be warranted
2 because Petitioner cannot show that he was prejudiced by any of the purported
3 deficiencies of counsel at trial or on appeal. (R&R at 32). Finally, as to all of Petitioner's
4 claims, an evidentiary hearing is unnecessary because the instant claims are all resolvable
5 on the current record. *See Cook v. Kernan*, 948 F.3d 952, 971 (9th Cir. 2020) ("If the
6 record contains a sufficient factual basis that 'refutes the applicant's factual allegations or
7 otherwise precludes habeas relief, a district court is not required to hold an evidentiary
8 hearing.'") (quoting *Schrivo v. Landrigan*, 550 U.S. 465, 474 (2007)); *see also Downs v.*
9 *Hoyt*, 232 F.3d 1031, 1041 (9th Cir. 2000) ("[T]he fact that a hearing would be permitted
10 does not mean that it is required. The district court retains discretion whether to hold
11 one."). Accordingly, Petitioner's request for an evidentiary hearing or expansion of the
12 record is denied.

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14 IT IS ORDERED that the First Amended Petition is denied and Judgment shall be
15 entered dismissing this action with prejudice.

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17 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and the
18 Judgment herein on Petitioner and counsel for Respondent.

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20 LET JUDGMENT BE ENTERED ACCORDINGLY.

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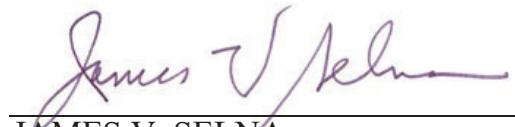
24 Dated: April 28, 2022

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JAMES V. SELNA
UNITED STATES DISTRICT JUDGE